

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 12, 2008

D050102 Annette F. v. Sharon S.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Annette shall recover her costs on appeal. Nares, J.; We Concur: McConnell, P.J., Aaron, J.

D052926 In re Pierce on Habeas Corpus

The petition is denied.

D051144 Evans v. Evans

The preliminary injunction order is reversed, and the matter is remanded for the court to reconsider the order consistent with the views expressed in this opinion. The parties to bear their own costs on appeal. CERTIFIED FOR PARTIAL PUBLICATION. Haller, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D049655 People v. Graham

The order of recommitment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

D051527 Judy W. et al. v. Jacob R.

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron
Clerk: D. Moore

D049751 People v. Goff

Cause called on merits. Steven Schorr, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Mr. Schorr replied. Cause submitted.

Court recessed at 9:30 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 12, 2008 (Continued)

D050224 People v. Figueroa

Cause called on merits. Jan Burns Norman, Esq. argued for appellant. Deborah LaTouche, Deputy Attorney General argued for respondent. Cause submitted.

D048882 Glickman et al. v. City of San Diego et al.

Cause called on merits. Glickman matter: Pamela Parker, Esq. argued for appellant, Glickman and etc. Gene Iredale, Esq. was present in oral argument with Ms. Parker, but did not address the court. B. Boyd Hight, Esq. argued for respondent, ACS State and Local Solutions and etc. Ms. Parker replied. Leone matter: Glenn Roberts, Esq. argued for appellant, Leone and etc. John Cotti, Esq. argued for respondent, City of West Hollywood, and etc. Cause submitted.

Court recessed at 10:34 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

Clerk: D. Moore

D048929 People v. Garibay

Cause called on merits. Julie Sullwold Hernandez, Esq. argued for appellant. Eric Swenson, Deputy Attorney General argued for respondent. Ms. Hernandez replied. Cause submitted.

D049192 People v. Contreras et al.

Cause called on merits. Rebecca P. Jones, Esq. argued for appellant, Gongora. Lynda A. Romero, Esq. argued for appellant, Torres. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Jones replied. Ms. Romero replied. Cause submitted.

D051413 In re Erica E. et al., Juveniles

D051716 In re Erica E. et al., Juveniles

Cause called on merits. Robert Francis McLaughlin, Esq. argued for appellant. Katharine Bird, Deputy County Counsel argued for respondent. Neil Trop, Esq. argued for the minors. Mr. McLaughlin replied. Cause submitted.

D050932 Cuddeback v. Yeung

Cause called on merits. Allen M. Gruber, Esq. argued for appellant. Ariel J. Sabban, Esq. argued for respondent. Mr. Gruber replied. Cause submitted.

Court recessed at 2:52 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 12, 2008 (Continued)

D049983 Troyk v. Farmers group Inc., et al.

Cause called on merits. Theodore J. Boutrous, Jr., Esq. argued for appellant. Richard Mainland, Esq. argued for real party in interest and appellant, Prematic Service. Timothy Blood, Esq. argued for respondent, Troyk. Mr. Boutrous replied. Mr. Mainland replied. Cause submitted.

Court recessed at 4:20 p.m. until Tuesday, May 13, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 13, 2008

D052092 People v. Wood

Upon filing an abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D050435 People v. LaValley

The judgment is reversed. The case is remanded to the trial court with directions to conduct a new hearing pursuant to section 1538.5, subdivision (i) and to permit the defense to introduce evidence regarding the police radio recording. If, after a proper hearing the court denies the motion to suppress, the court shall reinstate the judgment. If the court grants the motion to suppress evidence it shall conduct such further proceeding as may be appropriate. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

D051726 In re Austin E., a Juvenile

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

D048951 People v. Rodriguez

The judgment is affirmed. Nares, Acting P.J.; We Concur: Aaron, J., Irion, J.

D052766 Jose C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jose C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D051250 In re Nate T., a Juvenile

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron
Clerk: D. Moore

D048497 People v. New

Cause called on merits. R. Clayton Seaman, Esq. argued for appellant. Peter Quon, Deputy Attorney General argued for respondent. Mr. Seaman replied. Cause submitted.

Court recessed at 9:35 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 13, 2008 (Continued)

**D049331 Brinker Restaurant Corporation et al. v. Superior Court/Hohnbaum et al.-
RPI**

Matter called on merits. Rex S. Heinke, Esq. argued for petitioner, Brinker Restaurant Corporation. Karen J. Kubin, Esq. was present in oral argument with Mr. Heinke, but did not address the court. Michael D. Singer, Esq. argued for real party in interest, Hohnbaum, et al. L. Tracee Lorens, Esq. was present in oral argument for real party in interest, but did not address the court. Mr. Heinke replied. Mr. Heinke granted permission to file additional paperwork, due on or before Friday, May 16, 2008. Mr. Singer's response is due on or before Tuesday, May 20, 2008. Case to be submitted Tuesday, May 20, 2008.

Court recessed at 10:25 a.m. until 1:30 p.m.

D052901 In re Wiseman on Habeas Corpus

The petition is denied.

D052422 Conservatorship of the Person of Loren L.

The appeal is dismissed. Benke, Acting P.J.; We Concur: Nares, J., Aaron, J.

D052874 In re Simon on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Huffman, Haller and McIntyre. We take judicial notice of the direct appeal D049651.

On October 3, 2006, Joseph Amos Simon entered a negotiated guilty plea to selling cocaine base and admitted he had a prior conviction for selling a controlled substance. The court granted the People's motion to dismiss the remaining charges and sentenced Simon to the stipulated three-year prison term. On appeal Simon challenged a \$600 restitution fine imposed at sentencing. We affirmed the judgment on May 8, 2007.

Simon contends his commitment is unlawful because he was denied his right to bring a material witness to the preliminary hearing. Simon does not explain who the person is or how the person would have aided Simon's defense. By pleading guilty, Simon admitted each element of the offense. (*People v. Hill* (1974) 12 Cal.3d 731, 767-768; disapproved on other grounds in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896, fn. 5.) He also waived his appeal rights. Simon received the benefit of his plea bargain and he has not shown he is entitled to relief on habeas corpus.

The petition is denied.

D052207 In re Moses L., a Juvenile

The order is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 13, 2008 (Continued)

Court convened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D050536 People v. Renteria

Cause called on merits. Matthew Braner, Deputy Public Defender argued for appellant. Robin Derman, Deputy Attorney General argued for respondent. Mr. Braner replied. Cause submitted.

Court recessed at 1:51 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D051629 In re Armstrong on Habeas Corpus

Cause called on merits. Charles Chung, Deputy Attorney General argued for appellant. Richard Pfeiffer, Esq. argued for respondent. Mr. Chung replied. Cause submitted.

D050964 Figiel v. Hyundai Motor America

Cause called on merits. Robert S. Robinson, Esq. argued for appellant. Michael Edward Lindsey, Esq. argued for respondent. Mr. Robinson replied. Cause submitted.

Court recessed at 2:37 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D050709 People v. Olson

Cause called on merits. Sachi Wilson, Esq. argued for appellant. Stephanie Baril, Certified Law Student argued for respondent. Ms. Wilson replied. Cause submitted.

D051142 Stellmacher v. Dillon

Cause called on merits. Darrell J. Dillon, argued for respondent in pro per. Dennis O. Seymour, Esq. argued for appellant. Cause submitted.

Court recessed at 3:24 p.m. until Wednesday, May 14, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 14, 2008

D050430 People v. Munoz

The petition for rehearing is denied.

D052054 In re G. E., a Juvenile

The dispositional judgment is reversed. This case is remanded to the juvenile court, with directions to conduct an ICWA inquiry, direct the Agency to give ICWA notice to any applicable Indian entities, and proceed in conformance with ICWA. If, after inquiry and notice, no tribe indicates G.E. is an Indian child, the court shall reinstate the judgment. The remittitur is to issue forthwith. Benke, Acting P.J.; We Concur: Haller, J., McDonald. J.

D050751 People v. Johnson

The order is affirmed. CERTIFIED FOR PUBLICATION. McConnell, P.J.;
We Concur: Huffman, J., McIntyre, J.

D051974 In re Lucy B., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D049934 Ericson v. Federal Express Corporation

The judgment is affirmed. FedEx is entitled to costs on appeal. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

D052081 Hamzey v. Berger

Appellant has failed to file a brief. The appeal is dismissed.

D052971 People v. Armstrong

Review in the Court of Appeal of a decision by the Appellate Division of Superior Court is exclusively by transfer and certification under California Rules of Court, rule 8.1000 et seq. The appeal filed on April 28, 2008, is inoperative. The appeal is dismissed.

D052985 People v. Ames

The notice of appeal and March 27, 2008, minute order have been read and considered by Presiding Justice McConnell and Associate Justices Haller and McIntyre. Because the motion for return of property was denied without prejudice, there is no final appealable order. The appeal is DISMISSED.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 14, 2008 (Continued)

D051182 People v. Butler

Cause called on merits. Christopher Blake, Esq. argued for appellant. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 9:17 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

D051364 Regents of the University of California et al. v. Superior Court/Aquila Merchant Services Inc., et al.

Matter called on merits. Nancy Leavitt Fineman, Esq. argued for petitioner. Graydon Dean Luthey, Esq. argued for real party in interest, The Williams Companies, Inc. and etc. Joshua D. Lichtman, Esq. argued for real party in interest, Coral Energy Resources. Donald A. English, Esq. was present in oral argument, but did not address the court. Roxanna A. Manuel, Esq. was present in oral argument, but did not address the court. Matter submitted.

Court recessed at 10:05 a.m. until 1:30 p.m.

Court convened at 1:30 p.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D052169 In re Claudia E. et al., Juveniles

Cause called on merits. Andrea St. Julian, Esq. argued for appellant. Maryann Marisa Milcetic, Esq. argued for respondent, Jerica E. Konrad Lee, Esq. argued for respondent, Eric O. Gustavo Ramon, Deputy County Counsel argued for the Department. Ms. St. Julian replied. Ms. Milcetic replied. Cause submitted.

D051960 Volpe v. Superior Court/People-RPI

Matter called on merits. David Meir Stotland, Deputy City Attorney argued for real party in interest, The People. Mary Frances Prevost, Esq. argued for petitioner. Matter submitted.

D050452 Juneau v. County of San Diego Department of Animal Services

Cause called on merits. Robyn Theresa Ranke, Esq. argued for appellant. Thomas Deak, Deputy County Counsel argued for respondent. Ms. Ranke replied. Cause submitted.

Court recessed at 2:15 p.m. until Thursday, May 15, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 15, 2008

D051817 People v. Jackson

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D051976 People v. Joubert

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D051933 In re Anthony S., a Juvenile

The orders are affirmed. McIntyre, J.; We Concur: McConnell, P.J., McDonald, J.

D050239 People v. Lynch

The conviction on count 3 is reversed and the concurrent sentence imposed on count 4 is reversed. On remand, the trial court is directed to vacate Lynch's conviction on count 3 and to determine whether section 654 requires a stay of the sentence on count 4. In all other respects, the judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

D052905 In re Petty on Habeas Corpus

The petition is denied.

D052490 In re Chappell on Habeas Corpus

The petition is denied.

D049912 People v. Flores

Appellant's petition for rehearing is denied. The opinion, filed on April 25, 2008, is modified. There is no change in the judgment.

D052893 Auriemma v. Superior Court of San Diego County/Robert et al.

The petition for writ of mandate has been read and considered by Justices Huffman, Haller and McIntyre. The petition is denied.

D052751 Garland v. Workers' Compensation Appeals Board et al.

The petition is denied.

D052902 In re Hill on Habeas Corpus

The petition is denied.

D051561 People v. Yostie

The judgment is affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Irion, J.

D052231 In re Brendan C. et al., Juveniles

Appellant Christopher C. has failed to file a brief. The appeal is dismissed as to Christopher C. only.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 15, 2008 (Continued)

D052987 S. M. v. Superior Court of San Diego County/San Diego County Department of Social Services et al.

The order issued by this court of May 9, 2008, staying the detention of the minor in juvenile hall and requiring a response from real parties is vacated. The petition is dismissed as moot.

D052906 In re Scabery on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

Clerk: D. Moore

D050975 Shufelt, III v. Hall et al.

Cause called on merits. George W. Shufelt, III, argued for appellant in pro per (telephonically). John T. McGlothlin, Esq. argued for respondent, Hall and etc. Morris G. Hill, Deputy County Counsel argued for respondent, Hellstrom. Mr. Shufelt replied. Cause submitted.

Court recessed at 9:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

Clerk: D. Moore

D051445 Darnell & Scrivner Architecture, Inc. v. The Meadows Del Mar Home Owners Association

Cause called on merits. William Budd, Esq. argued for appellant. Randall E. Koenig, Esq. argued for respondent. Mr. Budd replied. Cause submitted.

Court recessed at 1:58 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D049259 Robles v. Autozone Stores, Inc.

Cause called on merits. Gregg C. Sindici, Esq. argued for appellant. Charles Moore, Esq. argued for respondent. Mr. Sindici replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

May 15, 2008 (Continued)

Court recessed at 2:56 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D050196 Hawkes v. Sommer

Cause called on merits. To the extent that Mr. Sommer has renewed the request for the court to recuse, the motion is denied. No appearance by Ervin Sommer, appellant in pro per. Gregory Y. Liewers, Esq. argued for respondent Cause submitted.

Court recessed at 3:10 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D047009 Marcisz et al. v. Movie Theater Entertainment Group, Inc.

Cause called on merits. Philip Edward Kay, Esq. argued for appellant. Mary A. Lehman, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 3:43 p.m. until Friday, May 16, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 16, 2008

D049921 People v. Mito

The judgment is reversed. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

D052841 Rhonda L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Rhonda L. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D049357 People v. Johnson

The judgment is modified to strike the parole revocation fine under section 1202.45. The trial court is directed to amend the abstract of judgment accordingly and to forward an amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. Moore

D052202 In re Shawni B., a Juvenile

Cause called on merits. Neale Bachmann, Esq. argued for appellant. Dana Shoffner, Deputy County Counsel argued for respondent. Julie E. Braden, Esq. argued for the minor. Ms. Bachmann replied. Cause submitted.

D050910 People v. Kaiser et al.

Cause called on merits. Douglas C. Brown, Esq. argued for appellant, Harry Kaiser. Richard M. Barnett, Esq. argued for appellant, Michele Kaiser. James Dutton, Deputy Attorney General argued for respondent. Mr. Brown replied. Cause submitted.

Court recessed at 10:03 a.m. to change panel members. New panel member: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D049359 People v. Blanco

Cause called on merits. Marianne Harguindeguy, Esq. argued for appellant. Eric Swenson, Deputy Attorney General argued for respondent. Ms. Harguindeguy replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
May 16, 2008 (Continued)

D050268 DRE #5, LLC et al. v. La Jolla Investment Company Inc., et al.

Cause called on merits. John Morris, Esq. argued for appellant. John Arthur Mayers, Esq. argued for respondent. Mr. Morris replied. Cause submitted.

Court adjourned at 10:40 a.m.

D051871 People v. Whisler

Affirmed. Haller, J.; We Concur: McConnell, P.J., McDonald, J.

D050560 People v. Coleman

The petition for rehearing is denied.

D052302 In re Mason L., a Juvenile

The motion to dismiss the appeal is GRANTED. The appeal is DISMISSED.

D053028 Negrete v. Superior Court of San Diego County/Becerra et al.

The petition is denied.

D053029 Negrete v. Superior Court of San Diego County/Becerra et al.

The petition is denied.

D052950 Chaidez v. Superior Court of San Diego County/People

The petition, stay request and motion are denied.

D052165 McQuarrie v. DVA Renal Healthcare, Inc.

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D053023 In re Smith on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Haller and McIntyre.

The disposition in *People v. Smith* (D049993) is not final until the remittitur issues. The petition is denied.

D052778 4 Point Pipeline Construction, Inc. v. Workers' Compensation Appeals Board/Flores

The petition is denied.